IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION No. 3166 of 2007.

Harischandra Budhaji Warghade
and Others. ..Applicants.

Vs.

The State of Maharashtra ..Respondent.

Mr S. V. Kotwal, Advocate for the applicants.

Ms M. H. Mhatre, ,A.P.P for the State.

CORAM: V.C. DAGA,J.
DATED: 9TH OCTOBER, 2007.

P.C.:-

1. Heard learned counsel for the applicants and learned APP for the State.

2. Perused the application and material available on record.

3. The applicants are seeking bail under Section 439 of the Cr.P.C. in C.R. No.I-10/2007 registered at Tokawade Police Station, for the offence punishable under Sections 143, 147, 148, 302, 326, read with Section 149 of the I.P.C.

4. According to the prosecution, on 29.3.2007 the nephew of the complainant, namely; Padmakar got engaged with a girl residing in Umbari village. To celebrate the said occasion, the informant's brother

Dhananjay, cousin Raghunath and other near relations were proceeding towards Umbari village for the pre-nuptial ceremony. At that time, near Shenwa Naka they had exchange of hot words with local boys. It appears that after celebrating engagement ceremony, the informant's relatives returned to the village-Veluk in the evening.

5. The informant and aforementioned Dhananjay and Raghunath and another cousin Janardhan were proceeding to make a phone call at about 9:30 p.m. on 29.3.2007 so as to report their safe return. It appears that while they were passing from the house of Laxman Warghade, the said Laxman Warghade called his group and told them that Dhananjay and Raghunath had arrived, who had abused the boys at Shenwa.

6. It is further alleged that Hanumant Warghade, Janardhan Laxman Warghade, Kantilal and Nilesh rushed there and started assaulting Dhananjay and Janardhan Undru Warghade with sticks. It is further alleged that Janardhan Laxman Warghade gave a blow with knife on the neck of the informant's brother Dhananjay. The informant noticed that his cousins Raghunath and Janardhan Undru Warghade had also suffered injuries and Raghunath had

suffered a blow on his stomach. The informant had also alleged in the F.I.R. that other villagers, namely; Baban Warghade, Hari Warghade, Tanaji Warghade, Navnath Warghade, Nandu Warghade, Vitthal Thamke, Yeshwant Warghade, Subhash Warghade and other four to five persons arrived at the spot and were shouting that Dhananjay should be killed. The informant, thereafter, had taken his injured brother Dhabnanjay to dispensary at Tokawade. That is how, the complaint came to be lodged against the co-accused and the present applicants.

7. Learned counsel for the applicants herein is seeking bail pressing into service the doctrine of parity. I was taken through the material available on record.

8. The learned counsel for the applicants, during the course of hearing, pressed into service the order dated 18.6.2007 passed in Criminal Application No. 1548 of 2007; whereby, learned Single Judge of this Court was pleased to grant bail to the co-accused Navnath Budhaji Warghade and in another Criminal Application No. 2619 of 2007; whereunder one of the co-accused; namely, Vinod Gopal Warghade was enlarged on bail on certain terms and conditions mentioned in the

said order.

9. Learned counsel for the applicants has presented a chart before this Court showing complicity of each of the applicants and the material, vis-a-vis of each applicants to claim parity with Nagnath and Vinod Warghade, who were enlarged on bail in two different orders of this Court as stated above.

10. Learned A.P.P. submits that if the applicants are released on bail, possibility of committing criminal offence by them cannot be ruled out. He, thus, submits that no bail should be granted to the present applicants.

11. Having seen the material on record, in my view, Harischandra, Nandkumar, Yeshwanta would be entitled for bail on parity with that of Nagnath.

12. The name of accused Vinod did not find place in the F.I.R. He was not implicated by anybody, except one Janardhan who stated that Vinod had attacked tempo. The names of Ratan and Bhagwan also do not find place in the F.I.R. but both of them are implicated by other witnesses. Therefore, the role of these applicants could be said tobe more or less similar to that of Nagnath and Vinod. As such

they would be entitled for bail on parity.

13. So far as Baban is concerned, it is no doubt true that looking to the role played by the present applicants, Yeshwanta, Ananda and Bhagwan are concerned, Baban has also played, more or less, similar role, however, if the statements of different witnesses are examined, then it would be clear that almost everybody has named and implicated Baban. He was instigating the other co-accused persons and actually assaulting the deceased. Therefore, looking to his involvement, gravity of the offence and the active role played by him with other co-accused persons, in my considered view, applicant Baban will not be entitled for bail even on parity. No submission was made on his behalf to seek his bail on merits.

14. In the above view of the matter, Harischandra, Nandkumar, Yeshwant, Ratan and Bhagwan be released on bail on following terms and conditions.

(a) The applicants, Harischandra s/o Budhaji Warghade, Nandkumar Budhaji Warghade, Yeshwant Kalu Warghade, Ratan Tanaji Warghade, and Bhagwan Kashinath Warghade, all resident of Veluk Tal.

Murbad, District Thane, arrested in connection with CR.No.I-10/2007 registered with Tokawade Police Station, district- Thane shall be enlarged on bail in the sum of Rs.25,000/- each with one or two sureties each to make up the said amount.

(b) The said applicants shall report to the concerned Police Station once in a week, i.e. on every Friday between 3.00 to 5.00 p.m. till conclusion of the trial.

(c) The order of bail will be given effect only after the applicants furnish to the investigating officer the details about their place of residence and address where they propose to stay after they are enlarged on bail. The applicants will not change their residential address thereafter till the conclusion of trial without prior intimation to the investigating officer.

(d) The applicants shall n directly or indirectly, make any inducement or threat or pressurise any prosecution witnesses and shall not in any manner tamper with the prosecution

evidence.

(e) The applicants shall co-operate with the investigating agency for disposal of the case. It is needless to mention that breach of any of the conditions by the applicants shall result in cancellation of bail.

(f) Any observation made in this order shall not be construed as finding or expression on merits of the case at the time of trial.

15. Application stands disposed of accordingly.

(V.C. DAGA,J.)